

Award No. 10021

Docket No. CL-9368

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Ogden Union Railway and Depot Company and/or its officers violated the terms of the existing agreement

(a) By abolishing the rate on position of Ass't Head Machine Operators \$15.748 per day and assigning work that had been done on these positions to Machine Operators rated \$15.04 per day.

(b) The Company shall now compensate all employes retroactive to March 26, 1955 and re-establish the rate of \$15.748 to the work.

EMPLOYES' STATEMENT OF FACTS: Facts having direct bearing on this claim must necessarily include information relative to Manifest Clerk positions over the years before consideration can be given to the instant claim dealing with Assistant Head Machine Operators.

For at least thirty years prior to the date of this claim the classification of "Manifest Clerk" included clerks working waybills and wheel or tonnage reports on outbound trains, such as Westbound Manifest clerks, Eastbound Manifest Clerks and Southbound Manifest Clerks. This classification also included "Manifest Passing Clerks" on which latter positions the major duties were the preparation of symbol or fruit block train passing reports, compiling information and preparing train delay wires, reporting all inbound manifest waybill symbols on special forms to the interested departments and railroads, reporting all outbound manifest waybill symbols on these same forms to the same officers of the railroads, and giving special attention and reporting to bad order cars moving under manifest symbol. All Manifest clerks had the same daily rate of pay, which immediately prior to the date of this claim was \$15.988.

Prior to February 1952, after extensive planning the Ogden Union Railway and Depot Company embarked upon a program to convert a considerable part of their Yard Office operation from a manual to an I.B.M. machine operation. For many months before this date numerous employes had contact and conversations with those making certain studies and setting up the program.

was given to the Carrier after the expiration date of June 26, 1956 and believing no submission was or had been filed by that date, the claims became, in the opinion of the Carrier, invalid.

The Carrier, without waiving its position as to the validity of these claims under the time limit provisions of the effective agreement (Section 1(c) of Article V of the August 21, 1954 Agreement), contends the within claims are not supported by any provision of agreement and that no provisions of the Agreement were violated and the claims should be denied.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known to the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: As a result of the Carrier's decision to mechanize its car records and office procedures, the parties entered into an agreement dated February 14, 1952, which provided, in part, as follows:

"1. It is contemplated that I.B.M. machines will be installed in the yard office at Ogden, on or about April 1, 1952, to facilitate the rendition and preparation of jumbo records, interchange reports, manifest reports, train consists, wheel reports and related work.

2. Listing of certain types of work in Paragraph 1 shall not be considered as limiting all the work that may be performed by mechanization, or that all of any one type of work as listed will be mechanized. The mechanization of various types of work may be added or eliminated.

3. It is estimated nine (9) positions will be established, or three (3) on each shift, to accomplish the work that is to be mechanized when the transition of work is completed. Classification and rates of pay are as follows:

No. of Positions	Classification	Rate Per Day
3	Head Machine Operators	\$13.92
6	Machine Operators	13.23

*Note: The rates herein shown are the basic rates effective February 1, 1951, and they do not include cost of living increases per agreement of March 1, 1951.

"The positions herein listed may be increased or decreased subject to the requirements of the service.

"The duties of positions herein classified include the operation of all types of I.B.M. Machines and the performance of incidental clerical work. The classification of Head Machine Operator includes, in addition, the responsibility for the proper rendition of and correctness of reports and other work processed by the I.B.M. Machines.

"4. Certain positions may be abolished subsequent to the installation of the I.B.M. System, consistent with the requirements of the service. However, no accurate or reasonable estimate can be furnished at this time."

The transition to mechanization occurred and the three Head Machine Operator positions as well as the six Machine Operator positions were estab-

lished. Subsequent actions of the Carrier became the basis for claims made by the Employees. In a letter to the Superintendent dated July 2, 1953, the General Chairman wrote, among other things, that:

"With reference to conference held in your office June 17, 1953 concerning the following claims:

"My letter to you April 28, 1953, claiming two hours additional pay at overtime rate March 16, 1953 favor G. D. Mikkelsen under provisions of Rule 5-C of Supplementary Agreement.

"My letter to you April 21, 1953, claim account work of wire requests for car records, etc., being transferred from Diversion Clerk positions to Jumbo Clerk positions and title of latter positions being changed to Car Record Clerks.

"My letter to you April 27, 1953, claim for increase in rate of pay for Machine Operator positions account doing work of manifesting cars which was previously performed by Train Clerk positions.

"My letter to you April 21, 1953, claim account three IBM Train Clerk positions abolished and three positions of Machine Operators established in lieu thereof.

"In further conference with Agent Mr. T. F. Power and also your Chief Clerk Mr. L. J. Carney on June 30th, we are agreeable to withdrawing the claims in each of the above instances on the following basis, to which both Messrs. Power and Carney concurred:

"1. That you will abolish the one position of Machine Operator on each of the three shifts and create in lieu thereof one position of Assistant Head Machine Operator on each of the three shifts with a basic rate of pay of \$14.708 per day effective July 1, 1953 * * *

By letter dated July 31, 1953, the Superintendent wrote the General Chairman, in part, as follows:

"Your letter July 2nd regarding four claims, which you have withdrawn.

"Authority has been received to establish, effective July 1, 1953; 3 asst. Head Machine Operators, basic rate \$14.708 per day in lieu of 3 Machine Operators basic rate \$14.00, and to establish 3 Passing Clerks, basic rate \$14.48 in lieu of 3 Card Record Clerks, basic rate \$14.00 * * *

The Carrier established three Assistant Head Machine Operator positions, rate \$15.508 per day, by bulletin dated July 30, 1953, and stated therein that employees bidding on these positions "must qualify to assist head machine operator in general supervision at all times and handle all work involving 063 and teletype machines."

By notice dated March 16, 1955, the Carrier abolished the three Assistant Head Machine Operator positions, rate \$15.748 per day. Thereafter, by bulletins

dated April 13 and May 10, 1955, the Carrier established three Machine Operator positions, rate \$15.04 per day. The Employees contend that these actions of the Carrier violated Rules 24, 26, 27 and 28 of the applicable Agreement.

It is the position of the Carrier that any supervisory responsibility of the Assistant Head Machine Operator positions which remained after the abolishment of these positions was absorbed by the Head Machine Operator, that the employees who occupy the subsequently established Machine Operator positions perform only machine operator work, and that these positions were rated in conformity with Rule 26. The Carrier also alleges that the Employees failed to comply with the time limit provision of Section 1 (c) of Article V of the August 21, 1954 National Agreement.

Consideration of the voluminous docket in this case leads to the view that the crucial question to be determined is whether the Machine Operator positions established in April and May 1955 cover "relatively the same class of work" as the Assistant Head Machine Operator positions which were established in 1953 and abolished in March 1955.

The record demonstrates that these Assistant Head Machine Operator positions were expressly assigned supervisory responsibility, namely "to assist head machine operator in general supervision at all times." This duty was specifically set forth in the bulletin dated July 30, 1953, which advertised these positions. The preponderance of the evidence in the record does not establish that such supervisory duty was assigned to the Machine Operator positions referred to or that the incumbents of those positions were required to assume it. Under these circumstances our decisions in Award 4992 and the cases which follow it are controlling here. In Award 4992 this Division held:

"We think it is within the province of the Carrier to determine the amount of supervision needed to properly expedite the work. If the foreman's position is not required and the supervisory duties of the position can be handled by other supervisory officers who are entitled to perform it, we can find no rule of the Agreement prohibiting such handling. Likewise, if any clerical work performed by the foreman remains, it may be assigned to clerks.

"The Organization asserts, however, that supervisory duties of the foreman's position were performed by Claimant after he displaced one of the occupants of a clerical position in the freight house. There is no evidence that he was instructed to perform supervisory duties by bulletin, oral direction or otherwise * * *. An employee may not voluntarily perform supervisory service without authority and subsequently assert such service in support of a claim."

See Awards 4235, 5149, 7059, 7066, 8231.

In panel discussion of the claim, it was argued on behalf of the Employees that violation of Rule 27 is established because the Carrier states that from an analysis it was determined that "the employees assigned to the positions of assistant head machine operators were performing only routine machine operations in common with all other machine operators." We do not agree. The record shows that the supervisory responsibility of assisting the Head Machine Operator in general supervision was a specifically assigned duty of the Assistant Head Machine Operator positions at all times such position existed. The fact that this assigned duty fell into disuse did not in itself remove it from the responsibilities of those positions; and this was the reason for the discontinuance of these positions.

The Carrier's time limit plea is without merit. The docket shows that the Employees' intention to file submission was timely and the evidence does not support the contention that such timely filing was withdrawn.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934:

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 24th day of July 1961.